

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REGINA V. STEPHENSON and DEPARTMENT OF VETERANS AFFAIRS,
NEW YORK VETERANS HOSPITAL, New York, N.Y.

*Docket No. 97-901; Submitted on the Record;
Issued April 13, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on and after March 6, 1995 causally related to an accepted March 19, 1985 left knee derangement with synovitis.

The Office of Workers' Compensation Programs accepted that on March 19, 1985 appellant, then a 36-year-old nursing assistant, sustained derangement of the left knee with synovitis when she fell in the performance of duty. Appellant returned to work on March 28, 1985, and sustained a second left knee injury on March 31, 1985, but did not file a compensation claim of record. The record indicates that appellant returned to work as a nursing assistant with intermittent periods of light duty.¹

On April 11, 1995 appellant filed a claim for recurrence of disability beginning March 6, 1995. Appellant asserted that, while going on a trip on her day off, her left knee gave way as she was sitting down in a bus seat. Appellant also described left knee injuries occurring on March 16, 1987 when she slipped on a wet floor while at work,² and on January 27, 1989

¹ In an April 30, 1985 report, Dr. Luis Mizray, an employing establishment physician, diagnosed derangement and contusion of the left knee. He released appellant to light duty with restrictions as of that day.

² In a March 6, 1987 report, an employing establishment physician noted that appellant slipped on a wet floor, landing on her left knee. Noting a history of the 1985 injury, the physician diagnosed chronic laxity of the anterior cruciate ligament.

when her left knee gave way and she fell on her way to work.³ She asserted that the March 19, 1985 injury caused continuing left knee pain, weakness and stiffness.⁴ Appellant was performing full duty at the time of the alleged recurrence of disability.⁵

In support of her claim, appellant submitted reports from Dr. Saurel Placide, an attending orthopedist. In a March 4, 1995 report, he noted appellant's presentation with pain from a March 4, 1995 left knee trauma, commenting that appellant had an "*old injury same knee.*" (Emphasis in the original.) In a March 6, 1995 report, Dr. Placide diagnosed traumatic synovitis of the left knee after twisting it while boarding a bus.⁶ In a March 9, 1995 report, he diagnosed degeneration of left knee cartilage, pathology of the anterior cruciate ligament and a posterior cyst, noting that appellant had marked difficulty with walking and required a cane. Dr. Placide recommended arthroscopy, and found appellant disabled for work.⁷ In a May 11, 1995 report, he referred appellant for possible arthroscopic evaluation. In May 30, 1995 reports, Dr. Placide diagnosed a medial meniscal tear, chondromalacia, anterior cruciate ligament tear and effusion of the left knee. He prescribed physical therapy, anti-inflammatory medications, a knee brace, a cane and checked a box "yes" indicating his support for causal relationship. Dr. Placide recommended light duty,⁸ and prescribed physical therapy through September 1995.

³ An unsigned February 1, 1989 chart note states that appellant fell on her left knee while on her way to work five days before, and reported left knee complaints following a 1985 twisting injury. March 22 and 27, 1989 chart notes state that, appellant twisted her left knee while struggling with a patient, causing pain, swelling and inability to bear weight. A physician diagnosed a possible meniscal tear or popliteal tendinitis. An August 25, 1989 chart note mentions that, since 1985, appellant's knee periodically "gave way," including once on her way to work. There are no compensation claims of record regarding either of these incidents.

⁴ The record indicates that appellant was placed on light duty following the March 4, 1995 injury, and that light duty was rescinded on February 15, 1996 following the Office's denial of appellant's claim for recurrence of disability.

⁵ In an August 14, 1995 letter and checklist, the Office advised appellant of the type of additional medical and factual evidence needed to establish her claim, including a rationalized physician's statement explaining how and why the claimed March 4, 1995 recurrence of disability was pathophysiologically related to the accepted March 19, 1985 left knee derangement with synovitis.

⁶ In a March 6, 1995 report, an employing establishment physician related that on March 4, 1995, while off duty, appellant twisted her left knee while on a bus going to a bingo hall.

⁷ March 6, 1995 x-rays showed "mild osteoarthritis of the left knee." A March 9, 1995 magnetic resonance imaging scan showed a tear of the posterior horn of the medial meniscus, possible tear of the lateral meniscus, effusion, chondromalacia of the patella, anterior cruciate ligament tear, Baker's cyst and infrapatellar bursitis. April 27, 1995 bilateral knee x-rays shows a "small joint effusion on the right" with no primary bony pathology of either knee.

⁸ Appellant accepted a sedentary light-duty position as of August 15, 1995.

By decision dated October 13, 1995, the Office denied appellant's claim on the grounds that appellant failed to establish that the claimed recurrence of disability occurred in the performance of duty. Appellant then requested a hearing held June 17, 1996.⁹ By decision dated and finalized September 27, 1996, the hearing representative affirmed as modified the Office's October 13, 1995 decision, finding that appellant failed to submit sufficient rationalized medical evidence to establish a causal relationship between the claimed recurrence of disability and the accepted March 19, 1985 injury. The hearing representative further found that as appellant did not file claims related to the alleged March 16, 1987 and January 27, 1989 left knee injuries, they could not be considered as accepted injuries, and that the March 4, 1995 injury did not appear to be work related.

After a complete review of the evidence and the issues involved, the Board finds that appellant has not established that her claimed recurrence of disability on and after March 6, 1995 is causally related to the accepted March 19, 1985 left knee sprain.

When an employee claims a recurrence of disability causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the claimed recurrence of disability is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.¹⁰ In this case, appellant did not submit a rationalized physician's statement explaining how and why any permanent, organic, objective changes to her left knee caused by the accepted March 19, 1985 injury would cause or influence her left knee condition beginning March 4, 1995.

Dr. Placide's reports do not specifically mention the March 19, 1985 injury, the only accepted work factor in this case. The Board notes that appellant did not file claims of record for the alleged March 16, 1987 or January 27, 1989 injuries, and that the March 4, 1995 bus incident is clearly not within the performance of duty. Also, they do not contain medical rationale attributing appellant's left knee condition to anything other than the March 4, 1995 bus incident. Although he noted that appellant had an "old injury" to her left knee, he did not specify its date or type. Therefore, Dr. Placide's reports are of diminished value in establishing causal relationship and are of insufficient weight to establish her claim.¹¹

The Board notes that, in addition to asserting that she sustained a recurrence of disability, appellant also alleges that the March 4, 1995 incident constitutes a consequential injury. At the hearing and in her correspondence with the Office, appellant asserted that her left knee was in

⁹ Appellant submitted employing establishment clinic notes dated from 1992 onward. Appellant also submitted treatment records from 1994 and 1995 relating to neck, left shoulder, back and skin conditions which are not relevant to the claim presently before the Board. The hearing representative advised appellant of the type of medical evidence needed to establish her claim for recurrence of disability, and left the record open for 60 days to give her the opportunity to submit such evidence. The record indicates that appellant did not submit additional medical evidence prior to issuance of the September 27, 1996 decision.

¹⁰ See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

¹¹ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

some way permanently changed by the March 19, 1985 injury, causing weakness, instability and “giving way,” such that the injury continued to affect her through March 4, 1995 when she sat down on the bus. In order to establish that the March 4, 1995 injury was somehow consequential to the March 19, 1985 injury, appellant would have to submit medical evidence establishing that the March 19, 1985 injury caused some permanent, objective, clinical change in appellant’s left knee such that it was more vulnerable to injury. Additionally, appellant would have to submit rationalized medical evidence indicating a history of symptoms and treatment for left knee problems during the 10-year gap between the two injuries and explaining that her left knee condition was related to the March 19, 1985 injury.¹² Although appellant submitted sporadic reports from 1987 and 1989 indicating that she sustained additional left knee injuries, she did not submit rationalized medical evidence indicating either that her left knee was permanently damaged by the March 19, 1985 injury, or that the injury would cause any difficulties as of March 6, 1995.

Consequently, appellant has failed to establish that she sustained a recurrence of disability on and after March 6, 1995 causally related to an accepted March 19, 1985 left knee derangement with synovitis, as she submitted insufficient rationalized medical evidence to establish causal relationship.

The decision of the Office of Workers’ Compensation Programs dated and finalized September 27, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 13, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹² For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Richard McBride*, 37 ECAB 748 (1986); see *Willie R. Thompson*, 32 ECAB 1705 (1981).